

United States District Court <sup>5th</sup> District  
 Name (under which you were convicted): C. Reyes  
 Place of Confinement: FMCC  
 UNITED STATES OF AMERICA

Docket or Case No.: 2:08-cr-01002-AM-1  
 Prisoner No.: 24740-280  
 Movant (include name under which convicted)

Crystal Reyes 2:16-cv-101  
**FILED**

JUL -7 2016

**MOTION**

CLERK, U.S. DISTRICT COURT  
 WESTERN DISTRICT OF TEXAS  
 BY JVS DEPUTY

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Rebecca Moore Div. Mgr.  
US Courthouse, 111 E. Broadway, Rm L-100  
San Antonio, Texas 78240

(b) Criminal docket or case number (if you know): 2:08-cr-01002-AM-1

2. (a) Date of the judgment of conviction (if you know): 1/7/09

(b) Date of sentencing: 2/25/13

3. Length of sentence: 240 months

4. Nature of crime (all counts):

21 USC § 952  
21 USC § 960(a)(1) and (b)(1)

5. (a) What was your plea? (Check one)

(1) Not guilty

(2) Guilty X

(3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or

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indictment, what did you plead guilty to and what did you plead not guilty to?

Same as indicated

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

Not Applicable

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No X

8. Did you appeal from the judgment of conviction? X Yes No

9. If you did appeal, answer the following:

(a) Name of court: Western Dist. Texas  
 (b) Docket or case number (if you know): 2:08-CR-01002-AM-1  
 (c) Result: Denied  
 (d) Date of result (if you know): 4/11/15  
 (e) Citation to the case (if you know): N/A  
 (f) Grounds raised:  
Miscal. Guideline  
Harsh Sentence

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes (No)

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

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(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised: N/A  
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10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

☒ Yes ☐ No

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11. If your answer to Question 10 was "Yes," give the following information:

(a)(1) Name of court: Western Dist. Texas

(2) Docket or case number (if you know): 2:08-CR-01002-AM-1

(3) Date of filing (if you know): 3/7/14

(4) Nature of the proceeding: Motion 2255

(5) Grounds raised: Miscalculation

Extreme Sentence

NO 5K1.1 Acknowledged

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☒ No

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(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒  
 (2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

This option just became available as a result of Johnson decision in 2016.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: 5K1.1 - Cooperation

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attached

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(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

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☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

☒ Yes ☐ No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Motion 2255

Name and location of the court where the motion or petition was filed: Western

Dist. of Texas

Docket or case number (if you know): 2:08-CR-01002-AM-1

Date of the court's decision: 4/1/15



Result (attach a copy of the court's opinion or order, if available):

n/a

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☒ No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

NOT Applicable

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

n/a

Docket or case number (if you know):

n/a

Date of the court's decision:

n/a

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Result (attach a copy of the court's opinion or order, if available):

n/a

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

n/a

GROUND TWO:

Miscalculation in Guidelines

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attached

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**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Never appealed

filed Motion 2255

**(c) Post-Conviction Proceedings:**

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(1) Did you raise this issue in any post-conviction motion, petition, or application?

☒ Yes ☐ No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Motion 2255

Name and location of the court where the motion or petition was filed: Western

District of Texas

Docket or case number (if you know): 2:08-CR-01002-AM-1

Date of the court's decision: 4/1/15

Result (attach a copy of the court's opinion or order, if available): Denied

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\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☒ No

(4) Did you appeal from the denial of your motion, petition, or application?

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Yes ☒ No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Option was not available until 2016.

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GROUND THREE: \_\_\_\_\_

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attached

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**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

*Newly Supported  
Claim of evidence*

\_\_\_\_\_  
**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒ No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/a

Docket or case number (if you know): N/a

Date of the court's decision: N/a

Result (attach a copy of the court's opinion or order, if available): N/a

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☒ No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No

(6) If your answer to Question (c)(4) is "Yes," state:

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Name and location of the court where the appeal was filed: N/a

\_\_\_\_\_

Docket or case number (if you know): N/a

Date of the court's decision: N/a

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

N/a

\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Newly supported evidence

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GROUND FOUR: \_\_\_\_\_

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See attached

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(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

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Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: Newly

supported evidence & examination

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒ No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/a

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☒ No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ Not applicable

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/a

Docket or case number (if you know):

N/a

Date of the court's decision:

N/a

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Result (attach a copy of the court's opinion or order, if available): N/A

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: None

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\_\_\_\_\_  
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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No  
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. NO

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15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Diana S. Aguilar

(b) At arraignment and plea: Gregory Torres

(c) At trial: N/A

(d) At sentencing: Gregory Torres

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A  
\_\_\_\_\_  
\_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you

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Based upon the Johnson decision, I am able to file a second or successive motion 18 USC § 2255 because of the Welch case that made it retroactive.


Therefore, movant asks that the Court grant the following relief: Reduce sentence imposed to 108-135 months.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct  
and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on  
June 28, 2016 (month, date, year).

Executed (signed) on June 28, 2016 (date).

  
Signature of Movant  
Crystal Reyes, Pro Se

If the person signing is not movant, state relationship to movant and explain why movant is not  
signing this motion. \_\_\_\_\_

\_\_\_\_\_



## Motion 2255

Crystal Reyes  
Reg. # 24740-280

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### Ground One: 5K1.1 - Cooperation

Upon arrest, I was questioned and interrogated by BPO as to my knowledge, involvement and participation in such acts in which I was being charged under 21 U.S.C. § 952. Initially, I was scared, unaware of the effects, consequences and ultimate punishment such action would cause, therefore I had lied and was reluctant to give full, accurate and truthful answers. However, once becoming aware of such and being informed by BPO officers, etc. that if I fully and truthfully cooperated, I would be given full consideration (5K1.1) for cooperating with them. Due to these factors, I fully cooperated once fully aware of the charges and all matters surrounding them. U.S. v Luster, 247 F.2d 496, 500 (2d. Cir. 1957). Due to the foresaid actions and agreement

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Crystal Reyes Reg. #24740-280

I was given a plea offer with the understanding that such would be factored into my guidelines/variance and any subsequent sentencing, so I accepted the plea, but wasn't fully informed nor understood the law. Salas v. US, 139 F.3d 322, 324 (2d Cir. 1998).

Ground Two: Miscalculation of Category

In such instant offense and as charged under 21 U.S.C §952, the government has miscalculated the base level fine, offense and category according to such charge, not withstanding all factors of consideration under such. The follow chart displays such errors in calculations and considerations according to the 2015 sentencing guidelines which have been amended from the 2009 ones which I was sentenced under.

Motion 2255

Crystal Hayes

Reg.# 24740-280

Page 3Government's Calculation

Base Level 43

§ 2B.1(c) Importation + 2

Accept. of Respon. - 3

Minimal particip. - 4

Total Off. Level 38

Category II (262-327mth)

\* Based upon 4.76 Kg VSProposed Calculation

Base Level 36

§ 2B.1(c) Imp. + 2

Accept. of Resp. - 3

5K1.1 Coop. - 1

Minimal particip. - 4

Total Off. Level 30

Category II (108-135mth)

\* Based upon 4.42 Kg

\* Verified \*

The incorrect guideline was purely based upon incorrect factual amounts of substance that had originated at time of arrest and later verified to be a lesser amount in which would substantially alter the range/category in which I was sentenced under and the amount of time I received.

Furthermore, my criminal history should be 1 as it reflects past criminal history on Jack thereof. The increase of 2pts. is properly given as to the actual

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Crystal Reyes  
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Act of importing such. The deduction -3 for acceptance of responsibility is proper as to deter future criminal acts as well as protect the public's interest. The additional deduction of -4 for minimal participant role is accurately reflected due to the actual amount of 4.42kg and only being paid \$300 for such transaction. There was no consideration or credit given on the government's behalf or according to their calculations for participation of 5K1.1 for cooperation. The minimal participation factor was present and verified by an intimate or familial relationship to commit such said offense and was otherwise unlikely to commit such if such element would be absent. No such money was actually received, I did not benefit in any way from such offense and had minimal knowledge and participation in offense.

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In utilizing Base offense level of 43 in accordance with 21 USC § 960(b)(1) Such Categorization establishes death or serious bodily injury resulting from the use of the substance and that I committed the offense after one or more prior convictions for a similar offense. This was NOT the case in such offense as no serious bodily injury occurred. Thus, as a result, according to Amend. 781. 2A2.2(b) if such offense involved amounted to 1.5 Kg but less than 4.5 Kg (4.42 Kg-Verified)- base offense level should be 36.

Ground Three: Safety Valve § 3B1.2(a)

Due to minimal participant factor in which I was given credit for by the government and the assignment that should of been properly assessed and assigned as no more than 1 criminal history point, such categorization would of therefore qualified me for



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Assignment and qualification under the "Safety valve" factor and Clause as a result of such.

Ground Four: Different Mannerism

In consideration of instant offense and exceptional circumstances surrounding such, had this gone to trial, any reasonable jurors could debate that this case should of been resolved in a different manner. Stack v. McDaniel, 529 US 473, 484 (2000).

Ground Five: Substantial Guidelines

Sentencing guidelines in which I was sentenced under were substantial rather than procedural as it altered the range of conduct and/or classification of persons that the law punishes. Schriro, 542 US at 353.

Ground Six: Decision of Guilt / Innocence

The decision to made to plead guilty was based on mitigating factors and advisement by counsel

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and was not the point or indication of my actual guilt or innocence. Lafler v Cooper, 132 S.Ct. 1376, 1384, 1388 (2012).

Ground Seven: 6th Amend. Significance

The amount of jail time I received as a result of the errors, miscalculations, and misapplication of guidelines has 6th Amendment significance. Glover v US, 531 US 198, 203 (2001).

Ground Eight: Reasonable Probability

My sentencing attorney didn't use reasonable probability when advising me as to actions and options to take throughout the judicial process. Strickland v Washington, 466 US 668, 688, 694 (1984).

Ground Nine: Confidence of Outcome

Again, sentencing counsel failed to use reasonable probability that would of been sufficient to undermine confidence of outcome.

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### Ground Ten: Competent Performance

Due to the forthcoming said allegations regarding defense counsel during the judicial process, counsel performed competently in some respects but not in others. Thomas v. Kuhlman, 255 F. Supp. 2d 99, 107 (EDNY 2003).

### Ground Eleven: Effective Counsel

My defense counsel's advice to accept plea under such categorical range, without acknowledgment of 5K1.1 and as a minimal participant wasn't within the range of competence demanded of attorney in criminal cases. Hill v. Lockhart, 474 US 52, 57 (1985).

### Ground Twelve: Right to Counsel

As a defendant of the court in a criminal case, I have a constitutional right to effective counsel during plea negotiations. Missouri v. Frye, 132 S. Ct. 1399 (2012).



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Page 9Ground Thirteen: 8th Amendment

The 8th Amendment rules are procedural even though ultimate source is substantive. Beard v Banks, 542 US 406, 408, 416, 417 (2004).

Ground Fourteen: De Novo Review

Circumstances did justify departure de novo review due to missing elements. Elements are essential for conviction. Reasonableness standard of review applies to all cases imposed after Booker under newly discretionary sentence scheme in order to review sentence for reasonableness, or pure erroneous facts (amount of substance and wide participation in scheme) or failure to adequately explain chosen sentence. "We review a district court's interpretation or application of the guidelines de novo and its factual findings for clear error. This

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Was such case, US v Conner, 537 F.3d 480, 489 (5th Cir. 2008).

Ground Fifteen: Unconstitutional Sentence

In light of recent Johnson case, sentencing was unconstitutional, due to residual clause of 18 USC 116(b) US v Gonzalez-Longoria, 813 F.3d 225 (5th Cir. 2016). Such section 116(b) identical to 18 USC § 924(c)(3). US v Bell, 2016 WL344749 (NDCAL 2016).

Ground Sixteen: Judicial Procedure

Such Johnson decision and meeting of the void qualifications for such are a judicial procedure rather than procedural.

Ground Seventeen: Similar Conduct

Such prior convictions for same act of conduct qualifies for a reduction and new classification of conduct as a result of the monumental Johnson case,

Motion 2255Crystal Reyes  
Reg. # 24740-280Page 11Ground Eighteen: Collateral Review

Recent decision in the Johnson-Waich case, made certain cases eligible for collateral review and such applicability to be applied retroactively.

Ground Nineteen: Void for Vagueness

The ACCA of 1984, 18 USC 924 (e)(2) (B)(iii) is void for vagueness and therefore unconstitutional, its so vague that it fails to give ordinary people fair notice of the conduct it punishes.

Ground Twenty: Requirements of Johnson

I meet such qualifying requirements under Johnson statute as

a.) enhanced in guideline as to current / past offense

b.) sentenced as a career offender.

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Page 12Ground Twenty-One: Announced New Rule

Johnson's announced new rule Teague v Lane, 489 US 288 (1989). Such wasn't precedent existing at the time the defendant's conviction became final.

Ground Twenty-Two: Career Guideline

The 10th Circuit has since implicated Career offender guideline. US v Madrid, 805 F.3d 1204 (10th Cir. 2016).

Ground Twenty-Three: Section 4B1.1(a)

As meeting such requirement as a career criminal if:

a.) 18yr. at time of conviction

b.) Conviction is a felony and/or of a controlled substance offense.

c.) Have 2 prior felony convictions for similar offense of a controlled substance.

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Page 13Ground Twenty-Four: Categorical Approach

Prior conviction qualifies if all elements are the same. Bescamps v. US, 133 S.Ct 2276 (2013). Bescamps uses pure Categorical approach; as such courts may resort to the modified Categorical approach to see if the conviction qualifies as an enumerated offense.

Ground Twenty-Five: 2255 Hearing

A hearing must be warranted if the motion set forth sets forth specific facts supported by competent evidence raising detailed and controverted issues of fact that, if proved at a hearing would entitle me to relief. US v. Aiello, 814 F.2d 109, 113-114 (2d. Cir. 1987).

Ground Twenty-Six: 2255 Ruling

In ruling on a motion 2255 motion under sub. 2255, the district court is required to hold a



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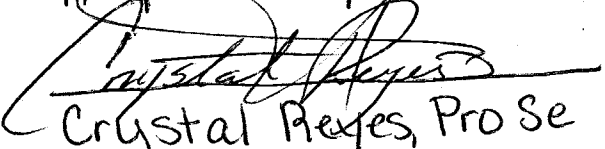
Crystal Reyes  
Reg# 24740-280

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hearing unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief. Gonzalez v US, Supra, 722 F. 3d 118, 130 (2d. Cir. 2013), quoting 28 USC § 2255.

Dated: June 28, 2016

Respectfully Submitted,

  
Crystal Reyes, Pro Se  
# 24740-280  
Fmc Carswell  
PO Box 27137  
Fort Worth, TX 76127

Certificate of Service

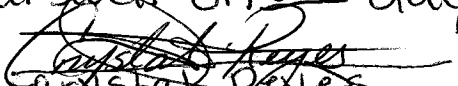
This is to certify that I have served a true and correct copy of the following:

Motion 18 U.S.C. § 2255

upon the following addresses, by placing same in a sealed envelope, bearing sufficient postage for the delivery via the United States Postal Service to:

Court House  
111 E Broadway ST  
Del Rio TX 78840

which was hand delivered to prison authorities on the grounds of the Federal Medical Center, Carswell on 28 day of June, 2016.

  
Crystal Reyes

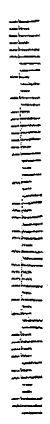
Name Carroll R. Ryan  
Reg. No. 24740280  
Federal Medical Center, Carswell  
P.O. Box 27137  
Ft. Worth, TX 76127

PLACE RETURN ADDRESS HERE  
**CERTIFIED MAIL**



7014 1820 0000 1507 7788

*Legal Mail*



↔24740-280↔  
Court House  
111 E Broadway ST  
DEL RIO, TX 78840  
United States